## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD KLUESNER,

ARD KLUESNER,

Claimant,

VS. :

BODINE ELECTRIC, : File No. 5061923

: ORDER NUNC PRO TUNC

Employer,

and :

AMERISURE PARTNERS INS. CO.,

Insurance Carrier, Defendants.

An arbitration decision was issued on April 21, 2020. Defendants filed a motion for rehearing in File No. 5061923 which was denied on May 4, 2020.

On May 8, 2020 defendants filed a motion for an order Nunc Pro Tunc.

The claimant informed the undersigned via email on May 11, 2020 that they would not be replying to the motion.

The phrase, "nunc pro tunc" means "now for then." <u>See</u>: <u>Black's Law Dictionary</u>, page 1218 (Revised 4th Edition 1968). The definition in Black's Law Dictionary further provides: "A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e. with the same effect as if regularly done." Black's at 1218. A nunc pro tunc order "is not for the purpose of correcting judicial thinking, a judicial conclusion, or a mistake of law." <u>Headley v. Headley</u>, 172 N.W.2d 104, 108 (lowa 1969). The nunc pro tunc order can be employed to correct obvious errors or to make an order conform to the judge's original intent. <u>Graber v. Dist. Court for Washington Cty.</u>, 410 N.W.2d 224, 229 (lowa 1987). <u>Brinson v. Spee Dee Delivery Service</u>, No. 8-754/06-2074 (lowa App. November 13, 2008) (lowa App., 2008).

The arbitration decision held:

Since claimant has suffered a permanent functional loss of 5 percent to the left upper extremity and 3 percent to the right upper extremity, these ratings are appropriately converted to 7 percent of the body as a whole, using the combined values chart. (AMA <u>Guides to the Evaluation of Permanent Impairment</u>, Fifth Edition, p. 604) Seven (7) percent of 500 weeks is 35 weeks. Claimant is entitled to 15 weeks of benefits for the permanent partial disability in his arms.

(Arbitration Dec. pp. 11, 12)

The order portion of the decision held;

Defendants Bodine Electric and Amerisure Partners Insurance shall pay claimant thirty-five (35) weeks of permanent partial disability benefits at the weekly rate of five hundred seventy and 27/100 dollars (\$570.27) commencing August 19, 2017.

(Arb. p. 14)

The defendants' motion for Nunc Pro Tunc correctly states that using the combined values chart the upper extremity ratings should be converted to a body as a whole before using the combined values chart.

The undersigned made an error in applying the combined values chart. It was the intention of the undersigned to correctly apply the combined values chart.

The defendants correctly state that based upon the conversion chart in the AMA Guides 5<sup>th</sup> Ed. (Table 16-3 p. 439), a five percent upper extremity impairment converts to a three percent whole body. A three percent upper extremity impairment converts to a two percent whole body.

Appling the combined values chart correctly the claimant has a five percent whole body impairment. This entitles claimant to 25 weeks of benefits.

Defendants' motion for Nunc Pro Tunc is granted.

The arbitration decision of April 21, 2020 is amended as follows:

The following sentences in strikethrough are remove from the decision.

Since claimant has suffered a permanent functional loss of 5 percent to the left upper extremity and 3 percent to the right upper extremity, these ratings are appropriately converted to 7 percent of the body as a whole, using the combined values chart. (AMA <u>Guides to the Evaluation of Permanent Impairment</u>, Fifth Edition, p. 604) Seven (7) percent of 500 weeks is 35 weeks. Claimant is entitled to 15 weeks of benefits for the permanent partial disability in his arms.

Defendants Bodine Electric and Amerisure Partners Insurance shall pay claimant thirty-five (35) weeks of permanent partial disability benefits at

the weekly rate of five hundred seventy and 27/100 dollars (\$570.27) commencing August 19, 2017.

In their place the following language shall be substituted.

Since claimant has suffered a permanent functional loss of 5 percent to the left upper extremity and 3 percent to the right upper extremity, these ratings are appropriately converted to 5 percent of the body as a whole, using the conversion chart and combined values chart. (AMA <u>Guides to the Evaluation of Permanent Impairment</u>, Fifth Edition, pp. 439, 604) Five percent of 500 weeks is 25 weeks. Claimant is entitled to 25 weeks of benefits for the permanent partial disability in his arms.

Defendants Bodine Electric and Amerisure Partners Insurance shall pay claimant twenty-five (25) weeks of permanent partial disability benefits at the weekly rate of five hundred seventy and 27/100 dollars (\$570.27) commencing August 19, 2017.

SO ORDERED.

Signed and filed this 11th day of May, 2020.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Caitlin Kilburg (via WCES)

Mark Sullivan (via WCES)